

PUBLIC INVOLVEMENT, COMMUNITY CHOICES, AND ENVIRONMENTAL DECISION-MAKING

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Presented to
Defense Environmental Task Force (DERTF) , February 2, 1999
Panel on Public Involvement in BRAC Environmental Cleanup

Public involvement can be like an old dog. You either love it, deep in your heart, or it is an unmitigated nuisance. I am not sure how the Department of Defense (DoD) feels about old dogs, or about public involvement, but their Base Reuse Implementation Manual acknowledges an important role for the organized community in base closure and reuse.

PUBLIC INVOLVEMENT

Public involvement means many things to different people. Inevitably there are limitations on the degree to which publics can be directly involved in policy-making or public management. These limits are closely related to limits on what we refer to as "democracy." But at its best - and perhaps the bottom line criterion - public involvement constitutes a process that is perceived as fair by all parties, regardless of how each fares in the outcomes. The test of widely perceived fairness is crucial.

What is public involvement? Let's start with the following: two-way dialogue between diverse sectors of the public and appropriate decision-makers.

- ! Two-way dialogue means deliberations, discussions, etc. An exchange of ideas and opportunity to compare data and together to understand data as information.
- ! Diverse sectors means exactly that, diverse interests having the opportunity to exercise rights as citizens. It may be helpful to think of them as publics, not simply an undifferentiated, singular public.
- ! Appropriate decision-makers suggests there should not be a major disconnect between the audiences available to publics and the responsible decision-makers. To a degree this seems inevitable - especially moving up from local government to state and federal venues; nonetheless, this can be a threat to meaningful public involvement, and a limit on democracy.

The following do not qualify as acceptable public involvement: public relations, or similar one-way communication; simply being allowed to testify in highly controlled situations, often lacking access to important data readily available to decision-makers; and manipulation or use of deliberate distractions.

Public Education and Involvement

Too often privileged actors (agency personnel, officials, or whomever) dismiss public inputs with the following:

- ! "If they knew what we/I know they would think otherwise."
- ! "They don't have the real facts, and would not understand if they did."
- ! "They don't know the real facts, and we cannot tell."
- ! "They don't speak the right language, so they must not know much about this."

It is the responsibility of agencies and public officials not only to listen to various publics, and engage in honest dialogues, but to help educate those publics. For example, when dealing with environmental cleanup and property reuse, most citizens need assistance to become effective participants in dialogues about site characterization, treatment modalities, thresholds, margins of safety, etc.

Jargon is of no help. Insiders should not fill their messages with bureaucratic acronyms - BRIM, RAB, BCT, BRAC, NAVFAC, BTC, etc. - and confusing technical terms. Is this deliberate? No matter. Excusable? At best, such practices reveal serious limitations in the understanding of the speaker.

Educating the public can require time, energy, and even money. Time, for outreach, attending meetings, etc. Energy, for example, not only to attend but actually participate in meetings and dialogues, some of which can be exasperating. And money, to staff outreach programs and, at times, technical assistance. The latter can be especially relevant for issues that involve complex science such as found in hazardous waste characterization and remediation.

Organized Public Involvement

Except for those able to afford their own attorneys, accountants, lobbyists, and technical consultants, or for the well connected, most individuals do not approach the public arena with sufficient resources to command wide attention from decision-makers. Also, they do not command the resources to muster data on far-reaching and complex topics. Thus, organization can be a vital element for most of us who seek audiences among agencies, elected officials, and even the legal system. The lone wolf may get his or her three minutes before a local reuse

authority, or be allowed to talk frequently and even at considerable length before a citizens advisory group, but the quantity of this participation by itself is unlikely to shape outcomes. Perhaps there is a political message for humans in the fact that little fish swim in large schools.

"COMMUNITY" CHOICES AND LEGITIMACY OF PARALLEL PROCESSES

Local Reuse Planning

Reuse planning typically involves local government and its local reuse authority (LRA), supported by community advisory groups (CAGs) and perhaps specialized subcommittees. Whether or not local governments solicit, listen to, and act on public views is problematic; they are the duly constituted local authorities, in most instances based on election to public office. Any other body also purporting to represent the public must establish its legitimacy in relation to the fact of local government. This can be an issue for restoration advisory boards (RABs), as will be seen in a moment.

As you know, the DoD expects the community to draw up a plan for base reuse. This couples directly with responsibilities around environmental impact reviews and remediation. In the Base Reuse Implementation Manual (BRIM) we find the following regarding environmental impacts assessed under the National Environmental Policy Act (NEPA) process:

"It is DoD policy that the LRA's redevelopment plan, if available and to the extent legally permissible, will be a primary factor in the development of the proposed action, reasonable alternatives, and effects analysis .. in the NEPA process..." (p. 2-8)

And regarding cleanup:

"Environmental decisions are based on how the land is to be reused. Therefore, it is very important for the Military Department to be aware of the LRA's reuse concepts as soon as they are formulated, so that cleanup actions, in particular, may be conducted in a manner that is consistent, to the extent practicable, with reuse plans. It is also important for the Military Department to communicate environmental issues to the LRA early in the process, to ensure reuse planning is compatible ..." (p. 2-9)

Public Involvement in Decision-Making about Environmental Remediation

I have not been directly involved in this arena, but have the impression that the primary if not sole vehicle for formal public involvement is membership on restoration advisory boards, which advise BRAC Cleanup Teams (BCTs) comprising agency representatives. Technical assistance can be made available by the federal government, to present and help RAB members digest the meaning

of data.

Various features of this arrangement stand out.

- ! RABs only can advise not compel agency responses; agencies with regulatory powers usually justify this limit by reference to their respective legal mandates.
- ! The formal arrangement says nothing about resources available to RAB members, nor about access (even if non-voting or as non-discussants) to agency deliberations.
- ! RAB membership apparently is determined by agency invitations, or at least by a process separate from local government and its reuse authority.

Obviously, for RABs to constitute meaningful vehicles for public involvement they must satisfactorily address the criteria noted at the outset of my remarks - two-way dialogues, adequate representation, access to responsible/relevant decision-makers, and access to adequate data. But an equally relevant public-involvement concern looks beyond the remediation/BCT/RAB process, to its links with local reuse authorities.

Competing Processes?

The LRA and its CAG focus on developing a reuse plan, and feel they are the legitimate representatives of local public opinion. RAB members focus on site characterization and remediation, and may bring expertise perhaps not found even on a CAG's environmental subcommittee. But from the point of view of local government and its associated public involvement (and electoral) processes, RABs face legitimacy questions - they are outside the duly constituted local government process. RAB members also be seen as outsiders if they represent organizations not exclusively rooted in the local community - e.g., regional or national advocacy organizations.

These differences have direct relevance to cleanup plans, and especially to compromises. This brings us to a topic increasingly on the federal policy horizon, namely, institutional controls.

INSTITUTIONAL CONTROLS

Institutional controls are linked to risk-based cleanup, that is, handling of parcels whose only acceptable (re)uses must be compatible with an imperfect level of cleanup. These controls are non-engineering mechanisms used to prevent unacceptable exposures to remaining hazardous substances. To insure their integrity and long-term effectiveness, institutional controls must be monitored and enforced, most likely by local government, as locus of most land-use management

controls. Thus, the fate of institutional controls rests heavily on local government. And, since each military department is legally obligated to protect human health and the environment from hazardous waste sites on former bases, it has a major stake in the possibility first, that local authorities agree to compromise levels of cleanup, and that they are fully capable of assuring the long-term effectiveness of remedies.

Public involvement can play a crucial role in determining the fate of these controls. Only with widespread confidence in the prescribed mechanisms and motivations of decision-makers will institutional controls be acceptable. To succeed in this endeavor, the federal government has to be concerned about the credibility of local decision-makers who agree to such compromises, as well as, of course, about its own credibility. The community may have to be convinced that the federal government cannot or will not in any likely scenario have the funding and/or technology more fully to remediate the site. And they must trust their local leaders who agree to these compromises, and trust local institutions to sustain the required property reuse practices.

FINAL THOUGHTS

The following are worthy of serious consideration.

- ! Cleanup decision-makers (BCTs and RABs) must work closely with community efforts (LRAs and CAGs). Perhaps the LRA should have formal representation on the BRAC Cleanup Team, and CAG and RAB memberships should overlap significantly.
- ! The community reuse plan must in fact drive both the impact assessment process (as the preferred alternative) and environmental remediation.
- ! LRAs and CAGs should duly consider site contamination when formulating their reuse plans. But what does "duly consider" mean? As suggested, public involvement can be a useful tool helping all parties agree as to what is both technically and politically feasible; this may help reconcile community planning with remediation possibilities.

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